

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>VONA R. PRUTER</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 241,765
<b>LARNED STATE HOSPITAL</b>	)	
Respondent	)	
AND	)	
	)	
<b>STATE SELF INSURANCE FUND</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent appealed from an Award dated October 19, 1999 entered by Administrative Law Judge Bruce E. Moore. Claimant also appealed the Award but, in its brief and during oral argument to the Board, claimant asked that the ALJ's Award be affirmed. The Appeals Board heard oral argument on February 11, 2000.

**APPEARANCES**

Robert R. Lee of Wichita, Kansas, appeared on behalf of claimant. Richard L. Friedeman of Great Bend, Kansas, appeared on behalf of respondent and its insurance carrier.

**RECORD AND STIPULATIONS**

The Appeals Board has considered the record and adopted the stipulations listed in the Award.

**ISSUES**

The sole issue on appeal is the nature and extent of claimant's disability. The ALJ found claimant's simultaneous injuries to her right wrist and right ankle should be compensated on the basis of an injury to the body as a whole. Respondent contends the ALJ erred in awarding claimant a 7 percent permanent partial general body disability because (1) claimant did not suffer any permanent impairment to her lower extremity, (2) even if she did, an upper extremity impairment and a lower extremity impairment do not combine to make a whole body impairment, and (3) the upper extremity functional impairment rating given by Dr. Howard L. Wilcox, Jr. is more credible than the rating by Dr. C. Reiff Brown.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record and having considered the arguments and briefs of the parties, the Appeals Board finds that the Award entered by the ALJ should be affirmed. The Appeals Board adopts the findings, conclusions and orders of the ALJ as its own as if specifically set forth herein.

#### Findings of Fact

Claimant was injured on March 24, 1998. As she was helping a patient up some steps she slipped and fell, fracturing her right wrist and right ankle.

Board certified orthopedic surgeon Harold L. Wilcox, Jr., M.D., treated claimant's injuries. Using the Fourth Edition of the AMA Guides to the Evaluation of Permanent Impairment, Dr. Wilcox rated claimant at 5 percent to the right upper extremity. He did not find any permanent loss of function in the right ankle after healing occurred. Dr. Wilcox conceded that the AMA Guides do not specifically cover claimant's condition.

Board certified orthopedic surgeon C. Reiff Brown, M.D., examined claimant at the request of her attorney. In his opinion, claimant suffered a 7 percent impairment of function to the right upper extremity as a result of her loss of range of motion and an additional 10 percent to the right upper extremity as a result of weakness. Dr. Brown also found a 7 percent impairment of function of the right lower extremity due to loss of range of motion of the ankle.

#### Conclusions of Law

Claimant bears the burden of proof to establish her right to an award of compensation and to prove "the various conditions on which the claimant's right depends." K.S.A. 1997 Supp. 44-501(a). The Board must consider the entire record to determine whether claimant has satisfied the burden of proof. The Workers Compensation Act defines the terms "burden of proof" as "the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true." K.S.A. 1997 Supp. 44-508(g); see *also*, Chandler v. Central Oil Corp., 253 Kan. 50, 57, 853 P.2d 649 (1993).

Functional impairment is the extent, expressed as a percentage, of the loss of a portion of the total physiological capabilities of the human body as established by competent medical evidence and based on the AMA Guides. At the time of claimant's injury, the Act required that functional impairment be based on the Fourth Edition of those Guides. K.S.A. 1997 Supp. 44-510e(a).

The Appeals Board, as a trier of fact, must decide which testimony is more accurate and/or more credible and must adjust the medical testimony along with the testimony of the claimant and any other testimony that might be relevant to the question of disability. Tovar v. IBP, Inc., 15 Kan. App. 2d 782, 817 P.2d 212, *rev. denied* 249 Kan. 778 (1991).

The Board finds claimant has a 6 percent impairment of function to the right upper extremity as a result of her wrist injury. This converts to a 4 percent impairment of function to the body as a whole. This conclusion is based upon the ratings of both Dr. Wilcox and Dr. Brown but does not include the additional impairment Dr. Brown ascribed due to loss of strength.

The Board finds claimant has a 7 percent impairment of function to the right lower extremity as a result of her ankle injury. This converts to a 3 percent functional impairment to the body as a whole. This finding is based upon the rating by Dr. Brown, the only physician to find a permanent impairment from that injury. These ratings were given based upon the Fourth Edition of the AMA Guides.

The Workers Compensation Act recognizes two classes of injuries other than those which result in death or total disability, and those are permanent disability to a scheduled part of the body and permanent partial general disability. See, K.S.A. 1997 Supp. 44-510d; K.S.A. 1997 Supp. 44-510e. Scheduled injuries are individually defined and described in K.S.A. 1997 Supp. 44-510d. The loss of use of an arm or a leg is a scheduled injury. K.S.A. 1997 Supp. 510d(a)(12) & (15). See *also*, K.A.R. 51-7-8(c)(4).

"When a specific injury and disability is a scheduled injury under the Workmen's Compensation Act, the benefits provided under the schedule are exclusive of any other compensation." Berger v. Hahner, Foreman & Cale, Inc., 211 Kan. 541, 545, 506 P.2d 1175 (1973). A scheduled injury may evolve into a general disability through the subsequent occurrence of direct and natural consequences. Berger at 549.

In Murphy v. IBP, Inc., 240 Kan. 141, 144, 727 P.2d 468 (1986), the Supreme Court held that simultaneous aggravation to both arms and hands through repetitive use removes the disability from a scheduled injury and converts it to a general disability. "Where a claimant's hands and arms are simultaneously aggravated, resulting in work related injuries to both hands and arms, the injury is compensable as a percentage of disability to the body as a whole under K.S.A. 44-510e." Depew v. NCR Engineering & Manufacturing., 263 Kan. 15, Syl. ¶ 1, 947 P.2d 1 (1997).

K.S.A. 44-510c(a)(2) has been extended by case law to allow compensation for certain combination injuries based on permanent partial disability. See, Hardman v. City of Iola, 219 Kan. 840, 844, 549 P.2d 1013 (1976).

In Honn v. Elliott, 132 Kan. 454, 295 Pac. 719 (1931), the Supreme Court noted that the schedule of injuries found at R.S. Supp. 1930, 44-510(3)(c)(1) to (20) failed "to provide compensation for both members when they are in pairs." The Court then analogized to the permanent total statute and concluded that "when two feet are injured, as in the case before us, the compensation should not be computed for each one separately, as for the injury to one foot as provided by the schedule, but should be computed [as a body as a whole injury]." Honn at 458. K.S.A. 44-510c(a)(2) has been amended since Honn and now provides, in relevant part, "Loss of both eyes, both hands, both arms, both feet, or both legs, **or any combination thereof**, in the absence of proof to the contrary, shall constitute a permanent total disability." (Emphasis added.)

The fundamental rule of statutory construction, to which all others are subordinate, is that the intent of the legislature governs when that intent can be ascertained. Elliott v. Dillon Companies, 21 Kan. App. 908, 908 P.2d 1345, *affd.* 260 Kan. 411, 918 P.2d 1305 (1996). "In determining legislative intent, we are not limited to consideration of the language used in the statute." Workers Compensation Fund v. Silicone Distributing, Inc., 248 Kan. 551, 556, 809 P.2d 1199 (1991). The Board must not consider only certain isolated parts of the Act but must construe the several provisions of the Act together, *in pari materia*, so as to reconcile and bring them into workable harmony and to give effect to the entire Act if it is reasonably possible to do so.

"General and special statutes should be read together and harmonized whenever possible, but to the extent a conflict between them exists, the special statute will prevail unless it appears the legislature intended to make the general statute controlling." State ex rel. Tomasic v. Unified Gov. of Wyandotte Co./Kansas City, 264 Kan. 293, Syl. ¶ 9, 955 P.2d 1136 (1998).

The Appeals Board finds the Supreme Court's analysis in Honn, coupled with the language of K.S.A. 44-510c(a)(2), requires an award based upon a general body disability and not two separate scheduled injuries under K.S.A. 1997 Supp. 44-510d. This has been the generally accepted rule long followed by the Appeals Board. See, e.g., Macias v. GEC Precision Corp., WCAB Docket No. 154,166 (June, 1994). Accordingly, claimant is entitled to a permanent partial general disability award based upon her 7 percent functional impairment to the body as a whole.

#### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Bruce E. Moore dated October 19, 1999, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February 2000.

---

BOARD MEMBER

---

BOARD MEMBER

---

BOARD MEMBER

c: Robert R. Lee, Wichita, KS  
Richard L. Friedeman, Great Bend, KS  
Bruce E. Moore, Administrative Law Judge  
Philip S. Harness, Director